

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL ANTHONY ABELS,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

Case No. C07-5303 RBL/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report and Recommendation [Dkt. #77], and the remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
- (2) Defendants' motion to dismiss (Dkt. # 33) is **GRANTED** and Plaintiff's claims against all Defendants are **DISMISSED WITHOUT PREJUDICE except Plaintiff's claim of retaliatory transfer;**
- (3) Plaintiff is granted leave to amend his Complaint to allege facts showing how Defendants Clarke, Skipworth, and Hill personally participated in depriving Plaintiff of a right, privilege or immunity secured by the Constitution or law. Plaintiff's amended complaint shall be entitled "Second Amended Complaint" and must be related only to his claim that he was transferred by these Defendants in retaliation of a violation of a constitutional right. The Second Amended Complaint must carry the same case number as this one. Plaintiff is advised that the Second Amended Complaint operates as a *complete* substitute for an original pleading. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (citing *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (as amended), *cert. denied*, 506 U.S. 915 (1992)). Plaintiff shall file his Second Amended Complaint **within twenty (20) days of the date of this Order;**
- (4) The Court's Order staying discovery in this case (Dkt. # 60) shall remain in effect until further order of the Court;

- 1 (5) This matter shall be re-referred to Magistrate Judge Karen L. Strombom for further
2 proceedings; and
3 (6) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
4 and to the Hon. Karen L. Strombom.

5 DATED this 28th day of March, 2008.

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7 RONALD B. LEIGHTON
8 UNITED STATES DISTRICT JUDGE
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